

Before the
Federal Communications Commission
Washington, DC 20554

2001 NOV -7 A 10: 20

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Merrimack Valley Library Consortium)	File No. SLD-170257
Andover, Massachusetts)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: November 2, 2001

Released: November 5, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. Before the Accounting Policy Division (Division) is a Request for Review filed by Merrimack Valley Library Consortium (Merrimack), Andover, Massachusetts, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Merrimack seeks review of SLD's denial of its Funding Year 3 application for discounts under the schools and libraries universal service mechanism.² For the reasons discussed below, we deny the Request for Review and affirm SLD's decision.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all

¹ Letter from Bill B. Manson, Merrimack Valley Library Consortium, to Federal Communications Commission, filed February 22, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

potential competing service providers to review.⁴ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁵ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing window is in effect.⁶ These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services).⁷ Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.⁸ Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁹ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.¹⁰ In Funding Year 3, funding of discounted internal connections was available only for schools with discount rates of 82% or higher.¹¹

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000).

⁵ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915 (1998) (*Fifth Order on Reconsideration*).

⁷ 47 C.F.R. §§ 54.502, 54.503.

⁸ The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. See 47 C.F.R. § 54.507(a).

⁹ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

¹⁰ 47 C.F.R. § 54.507(g)(1)(iii).

¹¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, FCC 01-143, n.13 (rel. April 30, 2001) (*Further Notice of Proposed Rulemaking*).

4. In Funding Year 3, in an effort to ensure that the priority rules were not violated, SLD implemented a review procedure of reclassifying a request that the applicant designated telecommunications or Internet access (Priority One) as one seeking Priority Two services if any portion of the services requested were found to be Priority Two.¹² Absent such a procedure, SLD would be unable to act on funding requests that mixed Priority One and Priority Two services until Priority Two availability could be determined with certainty. This, in turn, would create a substantial backlog of application reviews late in the Funding Year 3 application review period, potentially causing funding delays injurious to applicants.¹³

5. At issue in this Request for Review is Funding Request Number (FRN) 338072 of Merrimack's Funding Year 3 application, which Merrimack listed as a request for discounted Internet access.¹⁴ During its application review of FRN 338072, however, SLD characterized the request as one seeking internal connections, and on June 30, 2000, it denied the request on the grounds that the "[f]unding cap will not provide for [i]nternal [c]onnections [less than] 81% discount to be funded."¹⁵

6. Merrimack appealed to SLD, asserting that SLD had improperly changed the category of the service of FRN 338072 to internal connections, because the service provider had no relationship with Merrimack other than to provide it with Internet access.¹⁶ On February 15, 2001, SLD denied the appeal.¹⁷ It explained that it had characterized FRN 338072 as internal connections based on Merrimack's statement, during review, that the request included the purchase costs of a router and a Channel Service Unit/Data Service Unit (CSU/DSU), both of which constituted internal connections.¹⁸ Merrimack then filed the pending Request for Review.

¹² See SLD Web Site, <http://www.sl.universalservice.org/reference/471_App_Guid_Docs/471_dozen.asp> (last updated April 15, 1999) ("To correctly apply the Rules of Priority (fund Telecommunications and Internet Access first, then Internal Connections beginning with neediest), SLD must 'scrub' telecommunications and Internet Access requests to assure no Internal Connections are included. A piece of equipment at the user's location listed in one of these categories risks having the entire service redefined as Internal Connections."); see also SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> (describing review procedure used in Funding Year 3 and new procedure applied in Funding Year 4).

¹³ See SLD Web Site, <<http://www.sl.universalservice.org/reference/ServCategories.asp>> ("While some applicants might prefer to wait until they know for sure whether funding will be sufficient to fund Internal Connections . . . SLD must process tens of thousands of applications and cannot leave these decision until the end and still meet its goal of notifying applicants of the decisions on their requests before the start of the fund year.").

¹⁴ FCC Form 471, Merrimack Valley Library Consortium, filed January 12, 2000, at 5 (Merrimack Form 471).

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bill Manson, Merrimack Valley Library Consortium, dated June 30, 2000, at 5.

¹⁶ Letter from Bill Manson, Merrimack Valley Library Consortium, to Schools and Libraries Division, Universal Service Administrative Company, filed July 10, 2000, at 1.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bill Manson, Merrimack Valley Library Consortium, dated February 15, 2001.

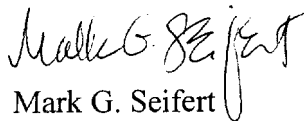
¹⁸ *Id.* at 1-2.

7. In its Request for Review, Merrimack does not dispute that a portion of FRN 338072 consists of internal connections, but argues that the remainder is correctly characterized as Internet access and should be funded.¹⁹ However, we continue to affirm SLD's Funding Year 3 operating procedure to characterize a request as Priority Two, if the request contained any Priority Two services.²⁰ The Commission's regulations authorize SLD to establish rules and procedures for the administration of the schools and libraries support application process in an efficient and effective manner, including procedures for the review of applications and the implementation of the Commission's rules of priority.²¹

8. We find that, because FRN 338072 included the costs for the purchase of a router and CSU/DSU, SLD correctly classified the funding request as internal connections. In Funding Year 3, only applicants with an 82% discount or higher received internal connections.²² Merrimack was entitled to a 44% discount under the discount matrix.²³ We therefore conclude that FRN 338072 was correctly denied.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Merrimack Valley Library Consortium, Andover, Massachusetts, on February 22, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

¹⁹ Request for Review, at 1.

²⁰ *Request for Review by Most Holy Trinity, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-161422, CC Dockets No. 96-45 and 97-21, Order, DA 01-2456 (Com. Car. Bur. rel. October 23, 2001) (*Most Holy Trinity Order*) (affirming procedure).

²¹ See 47 C.F.R. §§ 54.701(a), 54.702, 54.705(a)(iii), 54.705(a)(vii).

²² *Further Notice of Proposed Rulemaking*, FCC 01-143, n.13.

²³ See Merrimack Form 471.